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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,319	10/28/2004	Guenter Schubert	20496-445	6121

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PROSKAUER ROSE LLP
PATENT DEPARTMENT
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EXAMINER

KRUER, KEVIN R

ART UNIT PAPER NUMBER

1773

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/501,319

Applicant(s)

SCHUBERT ET AL.

Examiner

Kevin R. Kruer

Art Unit

1773

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED February 21, 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-4 and 6-8.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: see attached.

Advisory Action

Applicant's arguments filed February 21, 2006 have been fully considered but are not persuasive. Applicant's proposed amendments have not been entered because they would require further search and/or consideration. Applicant has proposed amending claim 1 to include the limitations of claim 7. However, said amendment would lead to claimed embodiments which have not previously been considered. Specifically, the limitations of claim 7 have not previously been considered with the limitations of claims 2-4, 6, and 8. Furthermore, the proposed amendment has not been entered because it does not simplify the issues for appeal by materially reducing and/or simplifying the issues on appeal.

Applicant's arguments with regards to "Toyo" are incumbent upon the entry of the proposed amendment. Since the amendment has not been entered, said arguments are moot.

With respect to the rejection of claims 1-4 and 6-8 under 35 USC 103(a) as being unpatentable over Festag in view of Okuhara, Applicant argues there is no motivation to combine said references. Applicant argues the objects of Festag cannot be achieved by including two aluminum foils surrounding merely one plastic foil because Festag requires the load bearing capacity of the plastic foil over the desired change in length must be greater than the load bearing capacity of the aluminum foil. Said argument has been fully considered, but is not persuasive. The combination does not require the metal to be applied to the laminate taught in Festag prior to deep drawing. Furthermore, the addition of a metal layer would not necessarily result in a laminate

wherein the metal layers comprise a greater load capacity than the plastic foils. Thus, the addition of the metal layer does not destroy the teachings of Festag.

Applicant further argues Festag does not teach the use of two aluminum foils. The examiner agrees but notes Festag was never relied upon by the Office to teach a second aluminum foil. Rather, the Office took the position that it would have been obvious in view of the teachings of Okuhara to add a second aluminum foil to the laminate of Festag. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant further argues Okuhara is silent with respect to applying a metal layer to a foil or other type of laminate material prior to making packaging or container. Said argument is noted but is not commensurate in scope with the claims. Specifically, there is no restriction with regards to when the second layer of aluminum is applied to the laminate.

Applicant further argues the combination does not teach each and every element of the claim. Specifically, applicant argues claim 7 requires the adhesion promoting layer and the tear resistant polymer to be co-extruded. Applicant argues said method leads to a bond of much higher quality and strength than in the case when the layers are merely laminated together. Said argument has been fully considered but is not

persuasive because there is no evidence to support said conclusion. Applicant is reminded that counsel's argument cannot take the place of evidence.

For the reasons noted above, the rejections are maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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